

Assembly Bill No. 2951

Passed the Assembly August 31, 2006

Chief Clerk of the Assembly

Passed the Senate August 31, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 54999.1 of, to add Section 54999.7 to, and to add and repeal Section 54999.8 of, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2951, Goldberg. Capital facilities fees.

(1) Existing law authorizes a public agency that provides public utility service, as defined, to impose a capital facilities fee on any school district, county office of education, community college district, the California State University, the University of California, or state agency, subject to certain restrictions. Existing law defines the terms “capital facilities fee” or “capacity charge” as any nondiscriminatory charge to pay the capital cost of a public utility facility, and defines the term “nondiscriminatory” for these purposes.

This bill would revise the definition of the term “public utility service.” It would revise the definition of the term “capital facilities fee” to mean a nondiscriminatory connection fee, as defined, or a nondiscriminatory capacity charge, as defined, or both.

The bill would require a public agency that provides public utility service to only charge a public agency fees, including rates, charges, or surcharges, for public utility service, other than electricity or gas, that do not exceed the reasonable cost of providing the public utility service. The bill would require that a fee, including a rate, charge, or surcharge for any product, commodity, or service provided to a public agency, be determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, subject to specified criteria. The bill would provide that these requirements do not apply to impositions or increases of capital facilities fees on a school district, county office of education, community college district, the California State University, the University of California, or a state agency.

The bill would, until January 1, 2010, require any judicial action or proceeding by a public agency that seeks a refund or

challenges the validity of a fee, rate, charge, or surcharge, or increase, or any action by a public agency to validate an ordinance, resolution, or motion imposing or increasing any of these, to be commenced, as specified.

The bill would require a public agency providing public utility service to complete a cost of service study at least once every 10 years that addresses the cost of providing public utility service to public schools, as defined, to include specified components, thus imposing a state-mandated local program on such an agency.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) The bill would make specified declarations with respect to its provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 54999.1 of the Government Code is amended to read:

54999.1. For purposes of this chapter:

(a) “Actual construction costs” includes the cost of all activities necessary or incidental to the construction of a public utility facility, such as financing, planning, designing, acquisition of property or interests in property, construction, reconstruction, and rehabilitation.

(b) “Capacity charge” means a one-time charge to recover the costs of public utility facilities necessary to establish new or expand existing public utility service to a public agency.

(c) (1) “Capital facilities fee” means a nondiscriminatory connection fee, a nondiscriminatory capacity charge, or both. “Capital facilities fee” does not include any other rate, charge, or surcharge, or any capital component thereof.

(2) For purposes of this subdivision, “nondiscriminatory” means that the fee does not exceed an amount determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, and is not in excess of the proportionate share of the cost of the public utility facilities of

benefit to the person or property being charged, based upon the proportionate share of use of those facilities.

(d) “Connection fee” means a fee to recover the costs of the physical facilities necessary to directly connect a public agency facility to a public utility service provided by a public agency, including, but not limited to, meters, meter boxes, and pipelines to make the connection, and the actual cost of labor and materials for the installation of those facilities.

(e) “Public agency” means the United States or any of its agencies, the state or any of its agencies, the California State University, the Regents of the University of California, a county, a county office of education, a city, a school district, community college district, or any other district, a public authority, or any other political subdivision or public corporation of this state.

(f) “Public school” means the California State University, the Regents of the University of California, a county office of education, a school district, or a community college district.

(g) “Public utility facility” means a facility for the provision of water, light, heat, communications, power, or garbage service, for flood control, drainage or sanitary purposes, or sewage collection, treatment, or disposal.

(h) “Public utility service” means service for water, light, heat, communications, power, or garbage, or for flood control, drainage or sanitary purposes, or sewage collection, treatment, or disposal, provided by a public agency.

(i) “State agency” or “state” means any state office, department, division, bureau, board, or commission.

SEC. 2. Section 54999.7 is added to the Government Code, to read:

54999.7. (a) Any public agency providing public utility service may impose a fee, including a rate, charge, or surcharge, for any product, commodity, or service provided to a public agency, and any public agency receiving service from a public agency providing public utility service shall pay that fee so imposed. Such a fee for public utility service, other than electricity or gas, shall not exceed the reasonable cost of providing the public utility service.

(b) A fee, including a rate, charge, or surcharge, for any product, commodity, or service provided to a public agency, shall be determined on the basis of the same objective criteria and

methodology applicable to comparable nonpublic users, based on customer classes established in consideration of service characteristics, demand patterns, and other relevant factors.

(c) A public agency providing public utility service shall complete a cost of service study at least once every 10 years that addresses the cost of providing public utility service to public schools. The study shall describe the methodology for the determination of cost responsibility, which may be identified by reference to appropriate industry ratemaking principles, including guidance associated with designing and developing water rates and charges issued by the American Water Works Association or guidance associated with other comparable industry principles recognized by public agencies providing public utility service.

(d) In addition to other notices required pursuant to state law or local ordinance or rule, whenever a public agency that provides public utility service holds a public meeting to establish or increase any rate, charge, surcharge, or fee, that public agency shall provide a written notice of the meeting not less than 60 days prior to the date of the public meeting to any public agency that has filed a written request for such a notice with either the clerk of the governing body or with any other person designated by the governing body to receive these requests.

(e) Upon request of any affected public agency made not less than 30 days prior to the date of the public meeting to establish or increase any rate, charge, surcharge, or fee, a public agency that provides public utility service shall provide the affected public agency with the data and proposed methodology for establishing or increasing the rate, charge, surcharge, or fee. The data and proposed methodology may be provided during a meeting of staff or other representatives of each agency.

(f) This section shall not apply to impositions or increases of capital facilities fees subject to Section 54999.3.

SEC. 3. Section 54999.8 is added to the Government Code, to read:

54999.8. (a) Any judicial action or proceeding by a public agency that seeks a refund of a fee, rate, charge, or surcharge, or increase in any of those costs, or that challenges the validity of a fee, rate, charge, or surcharge, or increase, imposed on or after January 1, 2007, pursuant to this chapter, shall be commenced

within 120 days of the effective date of the imposition of the fee, rate, charge, or surcharge, or increase.

(b) Any action by a public agency under this chapter to validate an ordinance, resolution, or motion imposing or increasing a fee, rate, charge, or surcharge shall be in accordance with Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. However, no action by a public agency imposing or increasing the fee, rate, charge, or surcharge shall be commenced any earlier than 120 days from the effective date of the imposition of the fee, rate, charge, surcharge, or increase.

(c) In any judicial action or proceeding brought pursuant to this section, the public agency imposing or increasing the fee, rate, charge, or surcharge shall have the burden of showing that it was established pursuant to Section 54999.3 or Section 54999.7.

(d) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 5. The amendments made to Section 54999.1 of, and the addition of Sections 54999.7 and 54999.8 to, the Government Code by this act are not intended to affect any litigation involving public utility services provided prior to January 1, 2007, brought prior to or subsequent to that date. Nothing in the legislative history of the amendments or additions made by this act should be construed as any indication of the meaning of the law as it existed prior to the effective date of the amendments and additions made by this act.

Approved _____, 2006

Governor